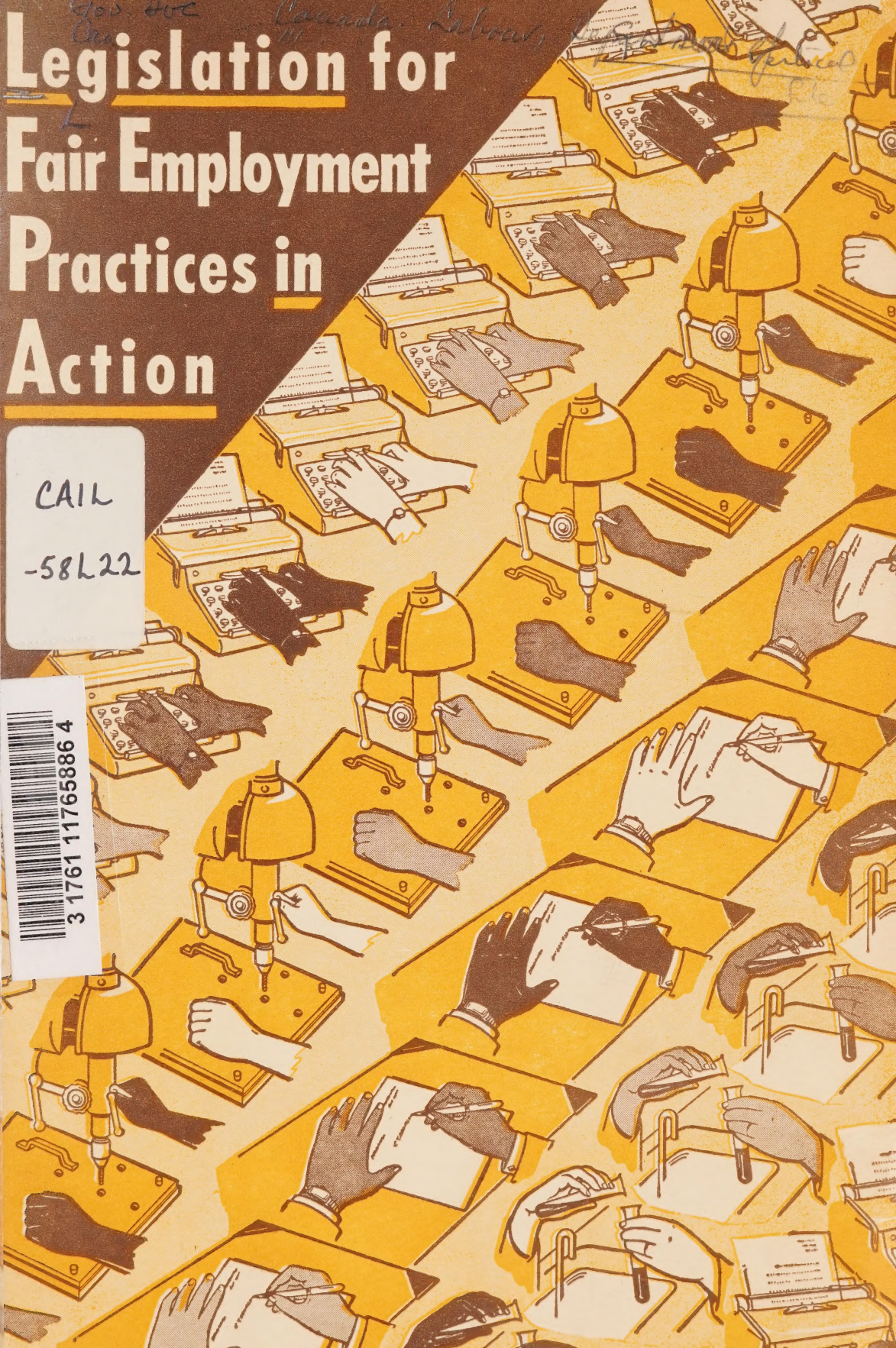
Legislation for Fair Employment Practices in Action



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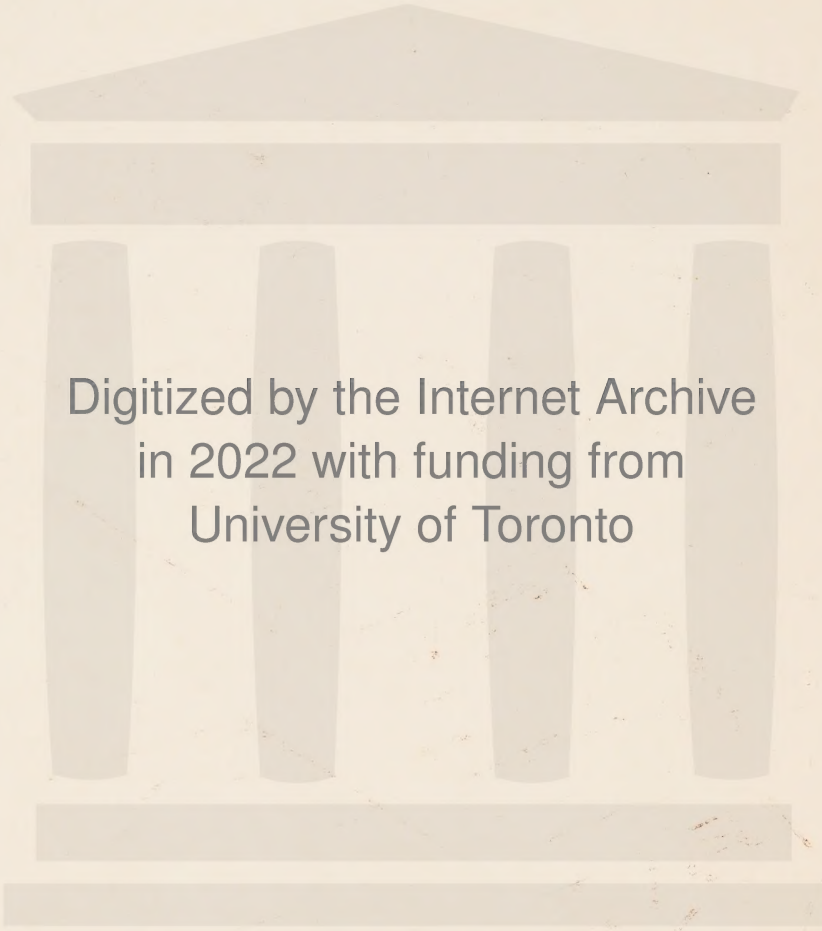
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LEGISLATION

for fair employment practices

IN ACTION

WHEN race, national origin, colour or religion are the standards by which jobs are filled, many individuals are denied the right to compete for employment on the basis of their ability to do the work. When this happens, a basic principle of true democracy is denied — recognition of the essential dignity and rights of the individual.

The remedy for discrimination in employment, like the remedy for many problems in society, is a combination of education and legislation. The Canada Fair Employment Practices Act does not attempt to control prejudice as such. Prejudice is a state of mind and cannot be controlled until it develops into acts of discrimination. The Act does protect people against discrimination in action — anti-social employment practices.

In addition to preventing overt acts of discrimination, legislation brings majority and minority groups together, creating the setting in which education can be most effective.

It has been learned by administrative experience that the Canada Fair Employment Practices Act is both workable and successful in operation. The following summary of five sample cases processed under the Act will show the nature of the complaints which have been received and the method of investigation followed.

case no. 1

On September 16, 1953, two months after the Act came into force, the first complaint was made under the legislation. The case concerned a Negro stenographer who complained against a firm within the scope of the Act. The person in question charged that she was refused employment on racial grounds. She further stated that she had answered an advertisement by telephone and was asked to come to the office of the firm for an interview. When she did, she was informed that the position was filled. No further explanation was given.

Within a short period of time the complainant telephoned the company and spoke with the person who had informed her that the vacancy had been filled. He indicated that the job was still open.

A Department of Labour Conciliator was appointed to investigate the case and he interviewed both the complainant and the officers of the company concerned. It was noted that the complainant was very fair in the discussion of her complaint before the Conciliator and devoid of any bitterness. When the company officials were interviewed they promptly admitted that an error had been made, they fully realized their liability in the situation and were most anxious to make an adjustment. The company, to show its good faith, sent an application form to the complainant who, in reply, stated that she had since taken another position. However, the Department was informed by both the complainant and the organization which supported her complaint that they were satisfied that the filing of her complaint had brought discrimination to light, that suitable amends had been offered and that the practical worth and workability of the legislation had been demonstrated. No further complaints have been received involving this particular company and it is known that the company has in its employ many persons of different colours, races and creeds.

case no. 2

This case history involved a person born in Denmark but living in Canada. He had had nine years' experience in his trade in Denmark and had served five years' apprenticeship in Canada. He applied to his trade union for a union card as a qualified mechanic. Although the local union had been instructed by the national officers of the union, because of representations made to them by the complainant, to issue the complainant a union card or to show valid reason for not doing so, no action was taken by the local. The person aggrieved submitted an official complaint to the Department that he had been discriminated against because of his national origin.

The complaint was processed by correspondence, and the national union officials, when they were notified of the complaint by the Department, immediately commenced a thorough investigation. The officials of the local union took the position that there was a question of the validity of the complainant's apprenticeship papers and also a question of his seniority. The accusation of discrimination was denied.

In this particular case, discrimination was not proved, although there was an indication that because the complainant was a new Canadian, a permanent union card was denied him. Proved or not proved, the result was that the complainant was issued a union card and became a full member of the union concerned.

case no. 3

This case started when a woman filed a complaint under the Act. She claimed that she had applied for employment in a certain company and that she was discriminated against because of her race.

The case was settled satisfactorily when the company agreed to issue instructions to its personnel stating that no discrimination

would be allowed against applicants for employment or against its present employees on the grounds of race, religion, colour or national origin. The company also agreed to advertise job vacancies in newspapers published in Canada in the language of the country of origin of the complainant. The complainant indicated she was no longer interested in taking a position with the company.

This was considered to be a most satisfactory settlement because the company concerned, which is an important one, has made a radical change in its personnel policy as a result.

case no. 4

The complaint which started this case was made by a man who claimed that the company had refused to hire him as a cook because of his race. The complainant also stated that the application form which was being used by the company contained a question on nationality which was contrary to the provisions of the Canada Fair Employment Practices Act. After the Department of Labour had investigated the case the company agreed to employ the complainant in another position and said that they would employ him as a cook if he still wanted that job during the next season. The complainant consented to a settlement of the case on this basis.

case no. 5

This case began when a Negro, already employed by his company, claimed that he was denied a promotion to a higher position because of his colour. The Department of Labour investigated and the case was settled when the company agreed in writing that the complainant would receive the next promotion to the same class of position as the one involved in the original complaint. Later on, the complainant was promoted, thus becoming the first Negro to be

employed by the company in that position. The settlement of this case was considered a most important one because it is believed to have broken down an employment barrier about which the Negroes of Canada were much concerned.

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the influence of the Act

The settlement of cases under the Act has directly influenced settlements in many other situations which, if it were not for the precedents established in the administration of the Act, would have inevitably led to the making of formal complaints.

As was expected, the Act has worked well, mainly because of the elements of persuasion embodied in its conciliation provisions. Thus far it has not been necessary to go beyond the first phase of enforcement in the settlement of complaints.

The number of cases investigated under the Act has not been large. However, the long-term effects of some of the cases dealt with should not be under-estimated. In some areas and industries, where in the past discrimination in employment has given rise to difficult problems, new patterns and precedents have been established, breaking through the old barriers. Discriminatory practices no longer have the deep-seated strength they once had and the way should be increasingly open to the acceptance of fair employment practices in the future.

the scope of the Act

The Act applies to employers in works or undertakings under federal jurisdiction and to trade unions representing persons employed therein. These undertakings include shipping, navigation, railways, canals, telegraphs, aerodromes, air lines, federal crown corporations, banks, radio and television broadcasting, as well as

works or undertakings that have been declared to be for the general advantage of Canada, or are outside the jurisdiction of the provincial legislatures.

protective provisions of the Act

The Act forbids an employer to refuse to employ a person or to discriminate against an employee because of his race, religion, colour or national origin. An employer is also forbidden to use an employment agency which practises such discrimination, or to publish employment advertising which is discriminatory, or to use discriminatory questions, written or oral, in connection with applications for employment.

The Act also forbids discriminatory practices by trade unions in regard to union membership or employment on the grounds of race, religion, colour or national origin.

Any person who believes he has been discriminated against in employment within Federal jurisdiction may file a complaint with the Director of Industrial Relations, Department of Labour, Ottawa. On receipt of such complaint, investigation and conciliation are used in the first instance, but if these means are not effective, an Industrial Inquiry Commission may be appointed and its report made public. The Minister of Labour is also empowered to issue whatever order he deems necessary to carry out the recommendations of the Commission.

Any person making a complaint under the provisions of the Act, or giving evidence or assistance in proceedings under the Act is protected from any retaliatory action that may be taken against him.

administrative action and activities

Just before the Canada Fair Employment Practices Act went into effect in July, 1953, copies of the Act were sent out to all em-

ployers under Federal jurisdiction, together with letters, asking them to submit a copy of their application forms for examination.

Thirty-six per cent of the employers reported that they did not have application forms. In most of these cases, the reason was that their operations were not large enough to require an application form. Most of the remainder sent in their forms and when a comprehensive study was made of them, it was found that the majority contained questions which could ordinarily be regarded as discriminatory. Since in most cases, there was probably no intent to discriminate, a pamphlet was prepared entitled: "A Memorandum for the Guidance of Employers" and was sent out to all employers within Federal jurisdiction informing them of the types of questions which, under certain circumstances, could be considered discriminatory in view of the provisions of the Act. The results of this critical review were most encouraging. Many employers informed the Department that they appreciated the advice; many others announced their intention to revise their forms and still others sent in copies of their revised forms.

From this critical review of employment application forms it was seen that Canadian employers under Federal jurisdiction were not intentionally discriminating in their employment practices. On the contrary, many of them obviously appreciated the objectives of the legislation and were eager to cooperate in an effort to eliminate discrimination.

Since the inception of the Act, there have been relatively few formal complaints. The majority were complaints alleging discrimination in employment because of colour. A substantial proportion alleged that there were discriminatory questions in application for employment forms, and the remaining complaints alleged discrimination because of race and national origin. Thus far, there have been no complaints alleging discrimination on religious grounds.

Conciliation Officers were appointed to deal with about sixty per cent of the complaints and the rest were dealt with through correspondence. Of the total complaints received about eighty per cent have been settled and the remainder are either under investigation or have been withdrawn.

In addition to the formal complaints received, there have been a number of other complaints which have been dealt with satisfactorily although they could not be processed formally under the Act.

co-operation in administration

There is no sure method of measuring the change toward the observance of fairer employment practices that has taken place in Canada in the last few years, but undoubtedly there has been a decided change for the better. The change cannot be attributed wholly to the Federal or various Provincial laws against discrimination. In addition to the direct effect of the legislation many agencies have contributed to the creation of public opinion favourable toward fairer employment practices. In this connection the immense influence wielded by many Canadian newspapers and magazines and other media cannot be over-emphasized. Organized labour has played and is playing an important role in defeating discrimination. Anti-discrimination committees are now established in many local labour organizations, and educational programmes to educate the membership to the dangers of discrimination have been sponsored and conducted by labour organizations. Also very effective work has been done in this field by voluntary groups formed solely for the purpose of defeating discrimination.

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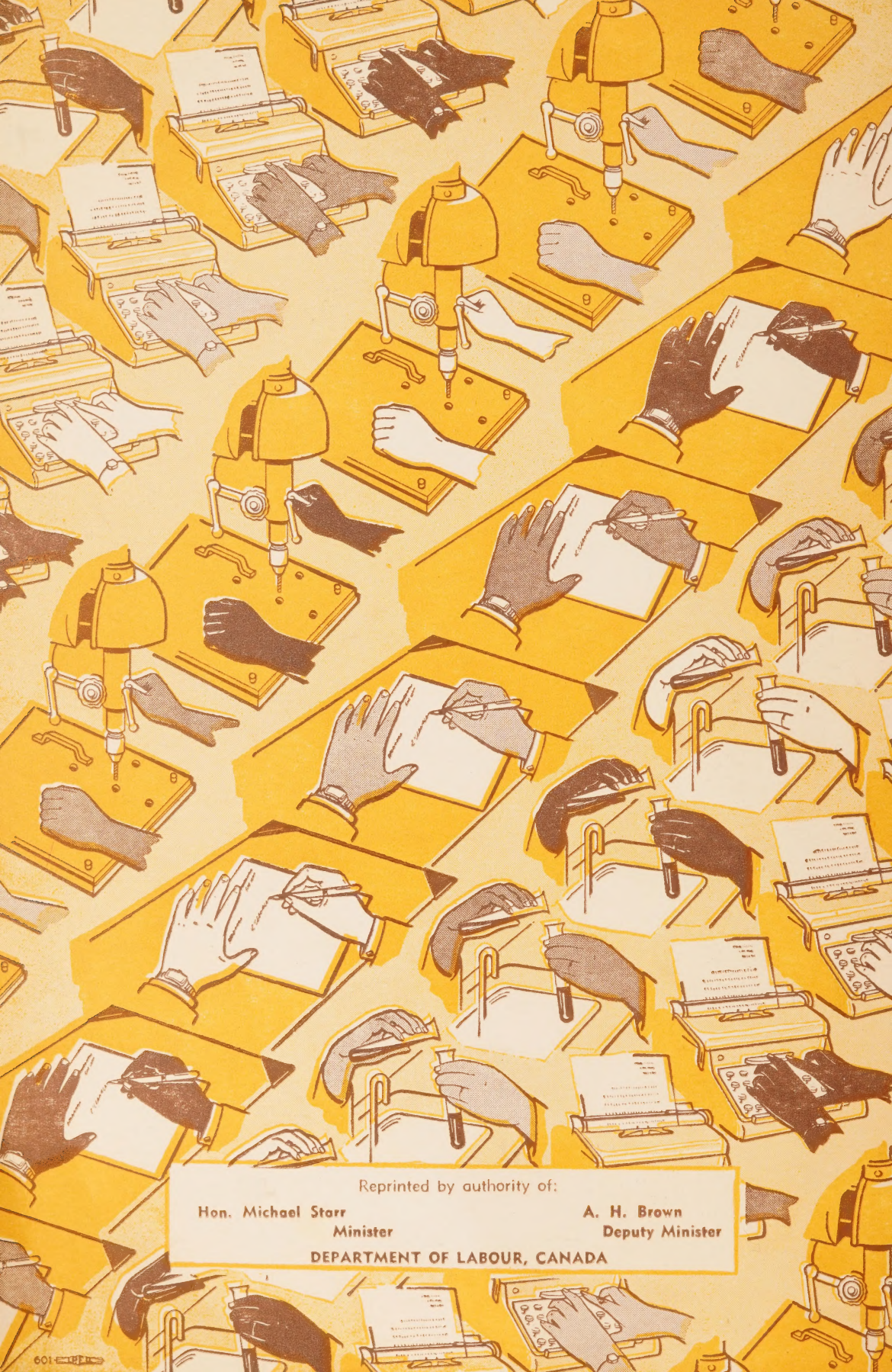

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